

No. 32.

U. S. Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

HORATIO T. BARLING AND JAMES EVA, }
 Plaintiffs in Error, }
 vs. }
BANK OF BRITISH NORTH AMERICA, }
 Defendant in Error. }

TRANSCRIPT OF THE RECORD.

WRIT OF ERROR TO UNITED STATES CIRCUIT COURT,
NORTHERN DISTRICT OF CALIFORNIA.

SMITH & POMEROY,
Attorneys for defendant in Error.

DANIEL TITUS,
Attorney for plaintiffs in Error.

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and holder of 5,000 shares of the capital stock of said last named Company.

5.

That on the 5th day of April, 1888, the said Alaska Improvement Company, at the City and County of San Francisco, by its bill of exchange in writing required the firm of William T. Coleman and Company, to pay to the order of itself, to wit: the said Alaska Improvement Company the sum of twenty-seven hundred and forty dollars sixty days after the date thereof; that on the said 5th day of April, 1888, the said Alaska Improvement Company indorsed the said bill of exchange in blank; that subsequently and before the maturity of said bill of exchange the said Alaska Improvement Company, for a valuable consideration to it paid did duly and in due course of business transfer and deliver the same to the said firm of William T. Coleman and Company; that subsequently and before the maturity of said bill, the said firm of William T. Coleman and Company, in consideration of the sum of twenty-seven hundred and forty dollars to it paid by the plaintiff, and in due course of business, sold, transferred and delivered the said bill to the plaintiff, at the City of Vancouver, British Columbia, who thereupon became, ever since has been and is now the owner and holder thereof; that on the 26th day of April, 1888, the said plaintiff presented the said bill of exchange to the said William T. Coleman and Company, for acceptance, and the said firm of William T. Coleman and Company thereupon accepted the same; that a copy of said bill of exchange, of the said indorsement of the Alaska Improvement Company, and of the said acceptance by William T. Coleman and Company is attached to this complaint, and made a part of this cause of action, and marked Exhibit "A".

6.

That at maturity of said bill the same was presented by the said plaintiff to the said firm of William T. Coleman and Company for payment, but that the same was not then paid in part or in whole, and that the whole thereof remains now unpaid by the said firm of William T. Coleman and Company, of all of which the Alaska Improvement Company then had notice.

7.

That the said plaintiff has demanded of the said Alaska Improvement Company payment of the said bill of exchange, but that the said last named Company has refused and neglected, and ever since has and does now refuse and neglect to pay the same, and that the same remains wholly unpaid.

8.

That by reason of the premises, the defendant Horatio T. Barling became, and is now liable to pay to the plaintiff his proportion of the amount due by the said Alaska Improvement Company on said bill of exchange, and that his said proportion thereof is the sum of eight hundred and ninety dollars and fifty cents, with interest thereon from the 4th of June, 1888, and that the same has not been paid, nor any part thereof, and that by reason of the premises, the defendant James Eva became, and is now, liable to pay to the plaintiff his proportion of the amount due by the said Alaska Improvement Company, on the said bill of exchange, and that his said proportion thereof is the sum of six hundred and eighty five dollars, with interest thereon from the 4th of June, 1888, and that the same has not been paid nor any part thereof.

And for a further and second cause of action against the said defendants, the plaintiff alleges:

9.

That at all the times hereinafter mentioned the said plaintiff was, continuously has been, and now is, a corporation duly organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, and a citizen and subject of said country.

10.

That at all the times hereinafter mentioned, the said defendant and each of them, were, continuously have been, and now are, citizens of the State of California.

11.

That at all the times hereinafter mentioned the Alaska Improvement Company was, continuously has been, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of California, and having a capital stock of two hundred and fifty thousand dollars, divided into 25,000 shares of the par value of ten dollars each, of which 20,000 shares have been subscribed for.

12.

That at and during all the times hereinafter mentioned, the defendant Horatio T. Barling has continuously been, and now is, the owner and holder of 6,500 shares of the capital stock of the said Alaska Improvement Company, and at and during all of such times the said defendant James Eva has continuously been, and now is, the owner and holder of 5,000 shares of the capital stock of said last named company.

13.

That on the 5th day of April, 1888, the said Alaska Improvement Company, at the City and County of San Francisco, by its bill of ex-

change in writing required the firm of William T. Coleman and Company to pay to the order of itself, to wit: the said Alaska Improvement Company, the sum of twenty-five hundred dollars, sixty days after the date thereof; that on the said 5th day of April, 1888, the said Alaska Improvement Company indorsed the said bill of exchange in blank; that subsequently and before the maturity of said bill of exchange the said Alaska Improvement Company, for a valuable consideration to it paid did duly and in due course of business transfer and deliver the same to the said firm of William T. Coleman and Company; that subsequently and before the maturity of said bill the said firm of William T. Coleman and Company, in consideration of the sum of twenty-five hundred dollars to it paid by the plaintiff, and in due course of business, sold, transferred and delivered the said bill to the plaintiff, at the City of Vancouver, British Columbia, who thereupon became, ever since has been, and is now the owner and holder thereof; that on the 26th day of April, 1888, the said plaintiff presented the said bill of exchange to the said William T. Coleman and Company, for acceptance, and the said firm of William T. Coleman and Company thereupon accepted the same; that a copy of said bill of exchange, of the said indorsement of the Alaska Improvement Company, and of the said acceptance by William T. Coleman and Company is attached to this complaint, and made a part of this cause of action, and marked Exhibit "B".

14.

That at maturity of said bill the same was presented by the said plaintiff to the said firm of William T. Coleman and Company for payment, but that the same was not then paid in part or in whole; and that the whole thereof remains now unpaid by the said firm of William T. Coleman and Company, of all of which the Alaska Improvement Company then had notice.

15.

That the said plaintiff has demanded of the said Alaska Improvement Company payment of the said bill of exchange, but that the said last named company has refused and neglected, and ever since then has, and does now refuse and neglect to pay the same, and that the same remains wholly unpaid.

16.

That by reason of the premises, the defendant Horatio T. Barling became, and is now liable to pay to the plaintiff his proportion of the amount due by the said Alaska Improvement Company on said bill of exchange, and that his said proportion thereof is the sum of eight hundred and twelve dollars and fifty cents, with interest thereon from the fourth day of June, 1888, and that the same has not been paid nor any

part thereof; and that by reason of the premises the defendant James Eva became, and is now, liable to pay to the plaintiff his proportion of the amount due by the said Alaska Improvement Company on the said bill of exchange, and that his said proportion thereof is the sum of six hundred and twenty-five dollars, with interest thereon from the 4th day of June, 1888, and that the same has not been paid nor any part thereof.

And for further and third cause of action against said defendant, the plaintiff alleges:

17.

That at all the times hereinafter mentioned the said plaintiff was, continuously has been, and now is, a corporation, duly organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, and a citizen and subject of said country.

18.

That at all the times hereinafter mentioned, the said defendants, and each of them, were, continuously have been, and now are, citizens of the State of California.

19.

That at all the times hereinafter mentioned, the Alaska Improvement Company was, continuously has been, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of California, and having a capital stock of two hundred and fifty thousand dollars, divided into 25,000 shares of the par value of ten dollars each, of which 20,000 shares have been subscribed for.

20.

That at and during all the times hereinafter mentioned, the defendant Horatio T. Barling has continuously been, and now is, the owner and holder of 6,500 shares of the capital stock of the said Alaska Improvement Company, and at and during all of such times the said defendant James Eva has continuously been, and now is, the owner and holder of 5,000 shares of the capital stock of said last named company.

21.

That on the 5th day of April, 1888, the said Alaska Improvement Company, at the City and County of San Francisco, by its bill of exchange in writing required the firm of William T. Coleman and Company to pay to the order of itself, to wit: the said Alaska Improvement Company, the sum of four thousand dollars, ninety days after date; that on the said 5th day of April, 1888, the said Alaska Improvement Company indorsed the said bill of exchange in blank; that subsequently and before the maturity of said bill of exchange the said

Alaska Improvement Company, for a valuable consideration to it paid did duly and in due course of business transfer and deliver the same to the said firm of William T. Coleman and Company; that subsequently and before the maturity of said bill, the said firm of William T. Coleman and Company, in consideration of the sum of four thousand dollars to it paid by the plaintiff, and in due course of business, sold, transferred and delivered the said bill to the plaintiff, at the City of Vancouver, British Columbia, who thereupon became, ever since has been, and is now the owner and holder thereof; that on the 26th day of April, 1888, the said plaintiff presented the said bill of exchange to the said William T. Coleman and Company for acceptance, and the said firm of William T. Coleman and Company thereupon accepted the same; that a copy of said bill of exchange, of the said indorsement of the Alaska Improvement Company, and of the said acceptance by William T. Coleman and Company, is attached to this complaint, and made a part of this cause of action, and marked Exhibit "C".

22.

That at the maturity of said bill the same was presented by the said plaintiff to the said firm of William T. Coleman and Company for payment, but that the same was not then paid in part or in whole, and that the whole thereof remains now unpaid by the said firm of William T. Coleman and Company, of all of which the Alaska Improvement Company then had notice.

23.

That the said plaintiff has demanded of the said Alaska Improvement Company payment of the said bill of exchange, but that the said last named company has refused and neglected, and ever since then has, and does now refuse and neglect to pay the same, and that the same remains wholly unpaid.

24.

That by reason of the premises, the defendant Horatio T. Barling became, and is now liable to pay to the said plaintiff his proportion of the amount due by the said Alaska Improvement Company on said bill of exchange, and that his said proportion thereof is the sum of thirteen hundred dollars, with interest thereon from the 5th day of July, 1888, and that the same has not been paid nor any part thereof; and that by reason of the premises, the defendant James Eva became, and now is, liable to pay to the plaintiff his proportion of the amount due by the said Alaska Improvement Company on the said bill of exchange, and that his said proportion thereof is the sum of one thousand dollars, with interest thereon from the 5th day of July, 1888, and that the same has not been paid, nor any part thereof.

WHEREFORE, the plaintiff prays judgment against the defendant for the costs of this action, and for a several judgment against the said defendant Horatio T. Barling in the sum of three thousand and three dollars, with interest on the sum of seventeen hundred and three dollars thereof from the 4th day of June, 1888, and with interest on the further sum of thirteen hundred dollars thereof from the 5th of July, 1888; and for a several judgment against the said defendant James Eva in the sum of twenty-three hundred and ten dollars, with interest on the sum of thirteen hundred and ten dollars thereof from the 4th day of June, 1888, and with interest on the further sum of one thousand dollars thereof from the 5th day of July, 1888, and for such other and further relief as may be just and equitable.

SMITH & POMEROY,
Attorneys for Plaintiff.

EXHIBIT A.

\$2,740.00.

SAN FRANCISCO, April 5th, 1888.

Sixty days after date pay to the order of ourselves twenty-seven hundred and forty dollars, value received, and charge to the account of Alaska Improvement Company, per J. F. Nesmith, President, James Madison, Secretary.

To Wm. T. Coleman & Co., San Francisco, Cal.

Accepted April 26th, 1888.

WM. T. COLEMAN & CO.

EXHIBIT B.

\$2,500.00.

SAN FRANCISCO, April 5th, 1888.

Sixty days after date pay to the order of ourselves twenty-five hundred dollars, value received, and charge to account of Alaska Improvement Company, per J. F. Nesmith, President, James Madison, Secretary.

To Wm. T. Coleman & Co., San Francisco, Cal.

Accepted, April 26th, 1888.

WM. T. COLEMAN & CO.

EXHIBIT C.

\$4,000.00.

SAN FRANCISCO, April 5th, 1888.

Ninety days after date pay to the order of ourselves four thousand dollars, value received, and charge to account of Alaska Improvement Company, per J. F. Nesmith, President, James Madison, Secretary.

To Wm. T. Coleman & Co., San Francisco, Cal.

Accepted April 26th, 1888.

WM. T. COLEMAN & CO.

STATE OF CALIFORNIA, }
 CITY AND COUNTY OF SAN FRANCISCO. } s.s.

William Lawson, being duly sworn, deposes and says: that he is an officer, to wit, the General Agent of the Bank of British North America, the plaintiff in the within entitled action; that he has read the foregoing complaint, and knows the contents thereof; that the same is true of his own knowledge, except to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

Subscribed and sworn to before me this 8th day of April, 1890. WM. LAWSON.

S. D. MONCKTON,
*Commissioner U. S. Circuit Court,
 Northern District of California.*

Endorsed: filed April 8th, 1890.

L. S. B. SAWYER, Clerk.

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES,

NINTH CIRCUIT NORTHERN DISTRICT OF CALIFORNIA.

THE BANK OF BRITISH NORTH AMERICA, }
Plaintiff,

vs.

HORATIO T. BARLING AND JAMES EVA, }
Defendants.

Action brought in the said Circuit Court, and the Complaint filed in the office of the Clerk of said Circuit Court, in the City and County of San Francisco.

The President of the United States of America, Greeting:

To HORATIO T. BARLING and JAMES EVA, *Defendants.*

You are hereby required to appear in an action brought against you by the above named plaintiff, in the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California, and to file your plea, answer or demurrer, to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the Clerk of said Court, in the City and County of San Francisco, within ten days after the service on you of this summons—if served in this County; or, if served out of this County, then within thirty days, —or judgment by default will be taken against you.

The said action is brought to obtain judgment against you for the costs of this action, and for several judgments against you as follows, to wit: against the defendant, Horatio T. Barling, in the sum of \$3,003, with interest on the sum of \$1,703 thereof from the 4th day of June, 1888, and with interest on the further sum of \$1,300 thereof from the 5th of July, 1888; and against the defendant, James Eva, in the sum

of \$2,310, with interest on the sum of \$1,310 thereof, from the 4th of June, 1888, and with interest on the further sum of \$1,000 thereof from the 5th of July, 1888; and for such other and further relief against each of you as may be just and equitable. Said action is brought, and said several judgments are asked against you, on account of your respective individual liabilities as stockholders in the Alaska Improvement Company, a corporation for the respective and proportionate amounts due from you as such stockholders, on the indebtedness due and owing by the said Alaska Improvement Company to the said plaintiff, on and by reason of three bills of exchange now owned and held by the plaintiff, each of which was drawn by the said Alaska Improvement Company, payable to its own order, on the firm of W. T. Coleman & Co., and transferred to the plaintiff, said bills of exchange being dated on the 5th day of April, 1888, for the sums of \$2,740, \$2,500 and \$4,000 respectively, and payable the first two sixty days after date, and the last ninety days after date, and each of which was accepted but not paid by the said firm of W. T. Coleman & Co., as will more fully appear by reference to the complaint on file herein; and if you fail to appear and plead, answer or demur, as herein required, your default will be entered and the plaintiff will apply to the Court for the relief demanded in the complaint.

WITNESS, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 8th day of April, in the year of our Lord one thousand, eight hundred and ninety, and of our Independence the 114th.

L. S. B. SAWYER, Clerk.

(Endorsed)

United States Marshal's Office, }
Northern District of California. }

I HEREBY CERTIFY, that I received the within writ on the 8th day of April, 1890, and personally served the same on the 11th day of April, 1890, to James Eva, by delivering to, and leaving with James Eva, said defendant named therein, personally, at the City and County of San Francisco, in said district, a certified copy thereof, together with a copy of the Complaint certified to by L. S. B. Sawyer, Clerk of the Circuit Court, attached thereto. And I further certify, that after due and diligent search I was unable to find Horatio T. Barling in my district.

San Francisco, April 25th, 1890.

J. C. FRANKS,

U. S. Marshall.

By JAMES R. DEANE, Deputy.

Filed April 25th, 1890.

L. S. B. SAWYER, Clerk.

By F. D. Moxcktox, Deputy Clerk.

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES,

NINTH CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA.

THE BANK OF BRITISH NORTH AMERICA,)
Plaintiff.

vs.

HORATIO T. BARLING AND JAMES EVA)
Defendants.Action brought in the
said Circuit Court, and
the Complaint filed in
the office of the Clerk of
said Circuit Court, in
the City and County of
San Francisco.*The President of the United States of America, Greeting :*TO HORATIO T. BARLING, *Defendant.*

You are hereby, as you heretofore have been, required to appear in an action brought against you by the above-named plaintiff, in the Circuit Court of the United States, Ninth Circuit, in and for the District of California, and to file your plea, answer or demurrer, to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the Clerk of said Court, in the City and County of San Francisco, within ten days after the service on you of this summons—if served in this County; or if served out of this County, then within thirty days,—or judgment by default will be taken against you.

The said action is brought to obtain judgment against you for the costs of this action and for several judgments against you, as follows, to wit; against the defendant, Horatio T. Barling in the sum of \$3,003, with interest on the sum of \$1,703 thereof from the 4th of June, 1888, and with interest on the further sum of \$1,300 thereof from the 5th of July, 1888; and against the defendant, James Eva, in the sum of \$2,310, with interest on the sum of \$1,310 thereof from the 4th of June, 1888, and with interest on the further sum of \$1,000 thereof from the 5th of July, 1888; and for such other and further relief against each of you as may be just and equitable. Said action is brought, and said several judgments are asked against you on account of your respective individual liabilities as stockholders in the Alaska Improvement Company, a corporation for the respective and proportionate amounts due from you, as such stockholders on the indebtedness due and owing by the said Alaska Improvement Company to the said plaintiff on and by reason of three bills of exchange now owned and held by the plaintiff, each of which was drawn by the said Alaska Improvement Company, payable to its own order, on the firm of W. T. Coleman and Company, and transferred to the plaintiff, said bills of exchange being each dated on the 5th day of April, 1888, for the sums of \$2,740, \$2,500 and \$4,000 respectively, and payable the first two sixty days after date, and the last ninety days after date, and each of which was accepted but not paid by the said firm of W. T. Coleman and Company,

as will more fully appear by reference to the complaint on file herein ; and if you fail to appear and plead, answer or demur, as herein required, your default will be entered and the plaintiff will apply to the Court for the relief demanded in the complaint.

WITNESS, the Honourable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 1st day of December, in the year of our Lord one thousand, eight hundred, and ninety, and of our Independence the 115th.

L. S. B. SAWYER, Clerk.

UNITED STATES MARSHAL'S OFFICE, }
DISTRICT OF CALIFORNIA. }

I HEREBY CERTIFY, that I received the within writ on the 11th day of December, 1890, and personally served the same on the 11th day of December, 1890, by delivering to, and leaving with Horatio T. Barling, said defendant named therein personally, at the City and County of San Francisco in said District, a certified copy thereof, together with a copy of the Complaint, certified to by L. S. B. Sawyer, attached thereto.

San Francisco, December 11, 1890.

W. G. LONG, U. S. Marshal.

By A. A. WOOD, Deputy.

Filed December 12, 1890.

L. S. B. SAWYER, Clerk.

By F. D. MONCKTON, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

THE BANK OF BRITISH NORTH AMERICA, }
Plaintiff. }

vs.

JAMES EVA, ET AL., *Defendants.* }

PLEA IN ABATEMENT.

Comes now James Eva, one of the defendants above named, and by his Attorney Daniel Titus, and takes and files herein his Plea in Abatement, and in this behalf he alleges and shows to the Court :

That said plaintiff ought not to have or maintain or be permitted to have and maintain this action for the reason that said plaintiff is now and for more than three years last past has been engaged in the business of banking in the said City and County and State, and has during all the said time and does now carry on a general banking business in said City and County and State, and being so engaged in and doing a banking business in said State is now and during all said

times has been subject to that certain Act of the Legislature of the State of California entitled: "An Act concerning Corporations and Persons engaged in the business of Banking." Approved April 1st, 1876.

And in this behalf the said defendant alleges upon and according to his information and belief that the said plaintiff did not and has not complied with the said Law and the Provisions thereof, and did not in the months of January and July, 1888, or in either of the said months or at any other time; or in the months of January or July, 1889, or in either of the said months or at any other time; or in the month of January, 1890, or at any other time, publish in one or more newspapers published in said City and County of San Francisco, State of California, the statements required by the said Act, or file for record in the Recorder's office of the said City and County of San Francisco, where plaintiff's principal place of business is situated, a sworn statement verified as required by the said Act of the amount of capital actually paid into such corporation, to wit: money *bona fide* paid into the treasury of said Bank, and did not at said times or at any other time or times comply with the provisions of Sect. II of the said Act, and did not make publish and file for record in the said Recorder's office in the months of January and July, 1888, or at any other time; or in the months of January or July, 1889, or at any other time; or in the month of January, 1890, or at any other time, the statements required by the said Sec. II of said Act, sworn to as therein required of the actual condition and value of plaintiff's assets and liabilities, or either or where the said assets are situated; and by reason thereof the said plaintiff has incurred the penalty of the said Act prescribed in paragraph III thereof, and which is as follows, to wit: "No corporation and no person or persons who fail to comply with the provisions of this law shall maintain or prosecute any action or proceeding in any of the Courts of this State until they shall have first duly filed the statements herein provided for, and in all other respects complied with the provisions of this law."

Wherefore, the said defendant prays that said action may abate and that he have a judgment dismissing the same, and for his costs in this behalf—costs unjustly incurred.

DANIEL TITUS,
Attorney for Defendant JAMES EVA.

I HEREBY CERTIFY, that in my opinion the above and foregoing Plea in Abatement is well founded point of law.

I. B. L. BRANDT,
Of Counsel.

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO } ss.

James Eva, being sworn says he is one of the defendants in the above entitled action, that he has read the foregoing Plea in Abatement and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

JAMES EVA.

Subscribed and sworn to before me
this 7th day of May, 1890.

[NOTARIAL SEAL] JAMES L. KING, Notary Public.

Endorsed: Service of the within Plea admitted by copy this
19th day of May, 1890.

SMITH & POMEROY,
Attorneys for Plaintiff.

Filed May 19th, 1890,
L. S. B. SAWYER, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern
District of California.

THE BANK OF BRITISH NORTH AMERICA,	}
<i>Plaintiff,</i>	
vs.	}
JAMES EVA, et al	

Now comes the plaintiff above named, by Smith & Pomeroy its attorneys, and demures to the plea in abatement of the defendant James Eva herein filed on the ground that the same does not state facts sufficient to constitute a defense to said action, and does not state facts sufficient to constitute an abatement of said action.

SMITH & POMEROY,
Attorneys for Plaintiff.

I HEREBY CERTIFY that in my opinion the above and foregoing demurrer is well founded in point of law.

CARTER P. POMEROY
of Counsel for Plaintiff.

Endorsed: Due service of the within demurrer is hereby admitted this 22nd day of May 1890,

DANIEL TITUS,
Attorney for Defendant, EVA.

Filed May 22, 1890.

L. S. B. SAWYER, Clerk,

By F. D. MOXCKTON, Deputy Clerk.

At a stated term, to wit: the November term A. D., 1890 of the Circuit Court of the United States of America, of the Ninth Judicial Circuit in and for the Northern District of California, held at the Court Room in the City and County of San Francisco on Monday the 22nd day of December in the year of our Lord one thousand eight hundred and ninety. PRESENT:

*The Honorable THOS. P. HAWLEY, United States District Judge,
District of Nevada.*

THE BANK OF BRITISH NORTH AMERICA)
vs.) No. 10,710.
HORATIO T. BARLING AND JAMES EVA)

The Plea of Defendant James Eva and the demurrer to said Plea heretofore argued and submitted to the court for consideration and decision, having been duly considered, it is ordered that the demurrer to said plea in abatement, be and the same hereby is sustained.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE BANK OF BRITISH NORTH AMERICA,)
Plaintiff.)
vs.)
HORATIO T. BARLING AND JAMES EVA)
Defendants.)

Come now the Defendants above named and demur to the Plaintiff's complaint in said action on the ground that said complaint does not state facts sufficient to constitute a cause of action.

Said defendants demur to said complaint on the further ground that the Court has not jurisdiction of the person of the Defendants or the subject of the action.

Said defendants demur to said complaint on the ground that the Plaintiff sues as an assignee of choses in action to wit: bills of exchange,

which were drawn by a domestic corporation in favor of itself on William T. Coleman and Company who were citizens and residents of the State of California. The drawer, drawee and payee of each of said bills of exchange being citizens and residents of the State of California.

WHEREFORE, the said defendants pray the judgment of this Court upon their demurrer to the plaintiff's complaint herein, and ask that such demurrer be sustained and that Defendants go hence without day.

DANIEL TITUS,
Attorney for Defendants.

I HEREBY CERTIFY that in my opinion the above and forgoing demurrer is well founded in point of law.

I. B. L. BRANDT
of Counsel.

Endorsed: Service per copy of the within demurrer admitted this 2nd day of January 1891.

SMITH & POMEROY,
Attorneys for Plaintiff.

Filed Jan. 2, 1891.

L. S. B. SAWYER, Clerk,
By F. D. MONCKTON, Deputy Clerk.

At a stated term to wit: the February term A. D. 1891 of the Circuit Court of the United States of America, of the Ninth Judicial Circuit in and for the Northern District of California, held at the Court Room in the City and County of San Francisco on Monday the 9th day of March in the year of our Lord one thousand eight hundred and ninety-one. PRESENT:

The Honorable THOMAS P. HAWLEY, *United States District Judge,*
District of Nevada.

THE BANK OF BRITISH NORTH AMERICA }
vs. } No. 10,710.
HORATIO T. BARLING et al }

The demurrer to the complaint herein heretofore argued and submitted to the Court for consideration and decision having been duly considered, it is ordered that said demurrer be and the same hereby is overruled, will leave to the defendants to answer herein within ten days.

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

THE BANK OF BRITISH NORTH AMERICA,	} <i>Plaintiff,</i>
vs.	
HORATIO T. BARLING AND JAMES EVA,	} <i>Defendants.</i>

Come now the defendants above named and answering the plaintiff's complaint in said action, allege that as to paragraph 1 of the first count or cause of action set out in plaintiff's complaint, and the allegations contained therein, the said defendants have no information or belief upon the subject sufficient to enable them to answer the same; and for that reason and placing their denials on that ground the said defendants deny that all or any of the times mentioned in the said complaint the said plaintiff was, continuously has been, or now is a corporation, or that it was duly or at all organized, or that it now exists under or by virtue of the laws of the United Kingdom of Great Britain and Ireland, or that it is a citizen or subject to said country.

Deny upon and according to their information and belief, that subsequently, or before the maturity of said bill or at any other time, the said firm of William T. Coleman and Company in the consideration of the sum of twenty-seven hundred and forty dollars (\$2,740), or in consideration of any other sum or amount to it paid by the plaintiff or in due course of business sold, transferred or delivered the said bill of exchange to the said plaintiff at the city of Vancouver, British Columbia, or that said plaintiff thereupon became the owner or holder thereof.

Defendants allege upon and according to their information and belief that the said firm of William T. Coleman and Company sold, transferred and delivered the said bill to the plaintiff in the State of Oregon, United States of America, and not at the city of Vancouver, British Columbia, as alleged in said complaint.

Defendants allege that as to the allegation in said first count of said complaint, and in paragraph 5 thereof, and which is in the words and figures following, to wit: "That on the 26th day of April, 1888, the said plaintiff presented the said bill of exchange to the said William T. Coleman and Company for acceptance, and the said firm of William T. Coleman and Company thereupon accepted the same." The said defendants have no information or belief upon the subject sufficient to enable them to answer the same, and for that reason, and placing their denials on that ground, the said defendants deny that on the 26th day of April, 1888, or at any other time, the said plaintiff presented the said bill of exchange to the said William T. Coleman and Company for

acceptance, or that said firm of William T. Coleman and Company thereupon or at all accepted the same.

Defendants deny upon and according to their information and belief that by reason of the premises or by reason of any matters or things set out in said complaint, the defendant Horatio T. Barling became or now is liable to pay to the plaintiff his proportion or any part of the amount due by the said Alaska Improvement Company on said bill of exchange, or that his proportion thereof is the sum of eight hundred and ninety dollars and fifty cents (\$890.50) or any part thereof, or any other sum with interest thereon from the 4th day of June, 1888, or from any other day or date; or that by reason of the aforesaid facts, or by reason of any fact alleged in said complaint, the defendant Jamea Eva became or now is liable to pay to the plaintiff his proportion or any proportion of the amount due by the said Alaska Improvement Company on said bill of exchange, or that his said proportion thereof is the sum of six hundred and eighty-five dollars (\$685), or any part thereof, or any other sum with interest thereon from the 4th day of June, 1888, or from any other day or date.

Further answering the said first count or cause of action, the said defendants allege and show to the Court that the said plaintiff ought not to have or maintain this action in this Court for the following reasons:

The said Alaska Improvement Company is a corporation organized and existing under the laws of the State of California.

The said firm of William T. Coleman and Company, as defendants are informed and believe, and so allege the fact to be, at the time of the making and endorsing of said bill of exchange was composed of William T. Coleman and Frank Johnstone, who were citizens and residents of the State of California at said time, and at all the times mentioned in said complaint; and by reason thereof could not have prosecuted or maintained an action in this Court on said bill of exchange.

That the drawer of the said bill of exchange, and the drawee and payee thereof, and the acceptors thereof are and at all times mentioned in the complaint were citizens and residents of the State of California, and that said bill of exchange was negotiated to the plaintiff in the said State of Oregon, by the said firm of William T. Coleman and Company, the acceptors thereof.

Answer to the Second Count or Cause of Action set forth in said Complaint.

The defendant's answering the plaintiff's second count or cause of action allege that as to the allegations contained in paragraph 9 there-

of, the said defendants have no information or belief upon the subject sufficient to enable them to answer the same, and for that reason and placing their denials on that ground, the said defendants deny that at all or any of the times mentioned in the said complaint the said plaintiff was, continuously has been or now is a corporation, or that it was duly or at all organized, or that it now exists under or by virtue of the laws of the United Kingdom of Great Britain and Ireland, or that it is a citizen or subject of said country.

Deny upon and according to their information and belief that subsequently and before the maturity of said bill of exchange, or at any other time, the said firm of William T. Coleman and Company in consideration of the sum of twenty-five hundred dollars (\$2,500) to it paid by the said plaintiff, or for any other consideration or in due course of business or otherwise, sold, transferred or delivered the said bill of exchange to the said plaintiff at the city of Vancouver, British Columbia; or that said plaintiff thereupon became or ever since has been or now is the owner or holder thereof.

Defendants allege upon and according to their information and belief that the said firm of William T. Coleman and Company sold, transferred and delivered the said bill to the plaintiff in the State of Oregon, United States of America, and not at the City of Vancouver, British Columbia, as alleged in said complaint.

Defendants allege as to the allegations in paragraph 13 of said complaint, beginning with the words "that on the 26th day of April," on line 19 of page 13 of said complaint, down to and including line 26 on said page. The said defendants have no information or belief upon the subject of said allegations sufficient to enable them to answer the same, and for that reason placing their denials on that ground, the said defendants deny that on the 26th day of April, 1888, or at any other time, the said plaintiff presented the said bill of exchange to the said William T. Coleman and Company for acceptance, or that the said firm of William T. Coleman and Company thereupon or at all accepted the same, or that a copy of said bill of exchange with the endorsements of acceptance by William T. Coleman and Company is attached to said complaint and made a part thereof as exhibit B.

Defendants deny upon and according to their information and belief that by reason of the premises, or by reason of any fact alleged in said complaint, the defendant Horatio T. Barling became or now is liable to pay to the plaintiff his proportion or any part of the amount due by the said Alaska Improvement Company on said bill of exchange, or that his said proportion thereof is the sum of eight hundred and twelve dollars and fifty cents (\$812.50) or any part thereof, or any other sum with interest from the 4th day of June, 1888, or without interest, or that the same has not been paid, or that by reason of the

premises or by reason of any fact alleged in the complaint the defendant James Eva became or now is liable to pay to the plaintiff his proportion of the said amount due by the said Alaska Improvement Company on the said bill of exchange, or that his said proportion thereof is the sum of six hundred and twenty-five dollars (\$625) or any part thereof, or any other sum with interest thereon from the 4th day of June, 1888, or from any other day or date, or that the same has not been paid.

Further answering the said second count of said complaint the defendants allege and show to the Court that the said firm of William T. Coleman and Company, as defendants are informed and believe, and so allege the fact to be at the time of the making and endorsing of said bill of exchange was composed of William T. Coleman and Frank Johnson, who were citizens and residents of the State of California at said time, and at all the times mentioned in said complaint, and by reason thereof could not have prosecuted or maintained an action in this Court on said bill of exchange.

That the drawer of the said bill of exchange and the drawee and payee thereof, and the acceptors thereof, are and at all times mentioned in the complaint, were citizens and residents of the State of California, and that said bill of exchange was negotiated to the plaintiff in the said State of Oregon by the said firm of William T. Coleman and Company, the acceptors thereof.

Answer to the Third Count or Cause of Action Set Forth in Said Complaint.

The said defendants allege that as to the allegations contained in paragraph 17 of said complaint, the said defendants have no information or belief upon the subject sufficient to enable them to answer the same, and for that reason, and placing their denial on that ground, the said defendants deny that at all or any of the times mentioned in the said complaint, the said plaintiff was, continuously has been or now is a corporation, or that it was duly or at all organized or that it now exists under or by virtue of the laws of the United Kingdom of Great Britain and Ireland or that it is a citizen or subject to said country.

Deny upon and according to their information and belief that before the maturity of said bill or at any other time, the said firm of William T. Coleman and Company in consideration of the sum of four thousand dollars (\$4000) or for any other consideration to it paid by the plaintiff or by anyone else or in due course of business, sold, transferred or delivered the said bill to the plaintiff at the City of Vancouver, British Columbia, or that said plaintiff thereupon became, ever since has been, or now is the owner or holder thereof.

Defendants allege upon and according to their information and belief that the said firm of William T. Coleman and Company sold, transferred and delivered the said bill to the plaintiff in the State of Oregon, United States of America, and not at the City of Vancouver, British Columbia as alleged in said complaint.

Defendants allege that as to the allegation in said third count of said complaint, and in paragraph 21 thereof, and which is in the words following, to wit :

“That on the 26th day of April, 1888, the said plaintiff presented the said bill of exchange to the said William T. Coleman and Company for acceptance, and the said firm of William T. Coleman and Company thereupon accepted the same.” The said defendants have no information or belief upon the subject sufficient to enable them to answer the same, and for that reason and placing their denials on that ground, the defendants deny that on the 26th day of April, 1888, or at any other time the said plaintiff presented the said bill of exchange to the said William T. Coleman and Company for acceptance, or that the said firm of William T. Coleman and Company thereupon or at all accepted the same.

Defendants deny upon and according to their information and belief that by reason of the premises or by reason of any fact alleged in said complaint, the defendant Horatio T. Barling became or now is liable to pay to the said plaintiff his proportion of the amount due by the said Alaska Improvement Company on said bill of exchange, and that his said proportion thereof is the sum of thirteen hundred dollars (\$1,300) or any part thereof, or any other sum with interest thereon from the 5th day of July, 1888, or from any other day and date, or that the same has not been paid, or that by reason of the premises the defendant James Eva became or now is liable to pay to the plaintiff his proportion of the amount due by the said Alaska Improvement Company on the said bill of exchange, and that his said proportion thereof is the sum of one thousand dollars (\$1,000) or any part thereof, or any other sum with interest thereon from the 5th day of July, 1888, or from any other day or date, or that the same has not been paid.

Further answering the said third count or cause of action of said complaint, the said defendants allege and show to the Court that the said plaintiff ought not to have or maintain this action in this Court for the following facts or reasons :

The said Alaska Improvement Company, the maker of said bill of exchange, is a corporation organized and existing under the laws of the State of California. That the said firm of William T. Coleman and Company, as defendants are informed and believe and so allege the facts to be, at the time of the making and endorsing of said bill of ex-

change was composed of William T. Coleman and Frank Johnson, who were citizens and residents of the State of California at said time and all the times mentioned in said complaint, and by reason thereof could not have prosecuted or maintained an action in this Court on said bill of exchange.

That the drawer of the said bill of exchange, and the drawee and payee thereof, and the acceptors thereof are and at all times mentioned in the complaint were citizens and residents of the State of California, and that said bill of exchange was negotiated to the plaintiff in the said State of Oregon by the said firm of William T. Coleman and Company, the acceptors thereof.

WHEREFORE, the said defendants having answered all and singular the allegations of plaintiff's said complaint, pray to be hence dismissed with their costs in this behalf most unjustly incurred.

DANIEL TITUS,
Attorney for Defendants.

I HEREBY CERTIFY, that in my opinion the above answer is well founded in point of law.

I. B. L. BRANDT,
Of Counsel.

STATE OF CALIFORNIA,)
CITY AND COUNTY OF SAN FRANCISCO, } ss.

Horatio T. Barling being now sworn says that he is one of the defendants in the above entitled action; that he has heard read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

HORATIO T. BARLING.

Subscribed and sworn to before me this 3rd day of April, 1891.
JAMES L. KING, Notary Public.

Endorsed: Service of the within answer admitted by copy this 7th day of April, 1891.

SMITH & POMEROY,
Attorneys for Plaintiff.

Filed April 7th, 1891,
L. S. B. SAWYER, Clerk.

In the Circuit Court of the United States, Ninth Circuit in and for the Northern District of California.

THE BANK OF BRITISH NORTH AMERICA,	} Plaintiff,
vs.	
HORATIO T. BARLING AND JAMES EVA,	} Defendants.

Findings and Decision.

This cause came on regularly for trial on the 25th day of September, 1891, Carter P. Pomeroy, Esquire, appearing as counsel for the plaintiff, and Daniel Titus, Esquire, appearing as counsel for the defendants. A trial thereof was had before the Court without a jury, a jury having been waived by the respective parties, and the evidence being closed, the cause was on the said 25th day of September, 1891, submitted to the Court for its consideration and decision, and the Court after due deliberation thereon, now finds the following facts and conclusions of law as follows, to wit:

1.

That all and singular the allegations contained in the plaintiff's complaint are true, except the allegations therein contained that the bills of exchange therein mentioned and referred to were sold, transferred and delivered to the plaintiff at the city of Vancouver, British Columbia.

2.

That the bills of exchange mentioned and referred to in the plaintiff's complaint, and each of them were sold, transferred to the plaintiff in the State of Oregon.

3.

That at the respective times of the making, endorsing and accepting of the said bills of exchange, and each of them and at all the times mentioned in the said complaint, the individuals composing the firm of William T. Coleman and Company, and each of them were citizens and residents of the State of California.

As conclusions of law from the foregoing facts, the Court finds as follows, to wit:

1.

That this Court has jurisdiction to hear and determine this action

2.

That the plaintiff is entitled to have and recover a several judgment against the defendant Horatio T. Barling in the sum of three

thousand seven hundred and thirty-five dollars and fifty-three cents (\$3735.53) with interest thereon at the rate of seven per cent per annum from the date hereof until paid; and is further entitled to have and recover a several judgment against the defendant James Eva in the sum of two thousand eight hundred and seventy-three dollars and fifty cents (\$2873.50) with interest thereon at the rate of seven per cent per annum from the date hereof until paid.

Let judgment be entered accordingly.

Dated December 12th, 1891.

(Signed) HAWLEY, *Judge*.

Endorsed: Filed December 12, 1891.

L. S. B. SAWYER, Clerk.

By W. B. BEAZLEY, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

THE BANK OF BRITISH NORTH AMERICA,	}	No. 10,710.
<i>Plaintiff,</i>		
vs.		
HORATIO T. BARLING AND JAMES EVA,	}	
<i>Defendants.</i>		

Judgment.

This cause having come on regularly for trial on the 25th day of September, 1891, Carter P. Pomeroy appearing as counsel for the plaintiff, and Daniel Titus appearing as counsel for the defendants, a trial thereof was had before the Court without a jury, a jury having been waived by the respective parties.

WHEREUPON, the evidence being closed, the cause was submitted to the Court for its consideration and decision, and the Court, after due deliberation, having heretofore made and filed its decision and findings in writing, and ordered that judgment be entered herein in favor of the plaintiff in accordance therewith.

WHEREFORE, by reason of the law and findings aforesaid, it is ordered, adjudged and decreed that the plaintiff, the Bank of British North America, do have and recover of and from the defendant Horatio T. Barling the sum of three thousand seven hundred and thirty-five dollars and fifty-three cents (3735.53) with interest thereon at the rate of seven per cent per annum from the date hereof until paid; and it is further ordered, adjudged and decreed that the said plaintiff

have and recover of and from the defendant James Eva, the sum of two thousand eight hundred and seventy-three dollars and fifty cents (\$2873.50) with interest thereon at the rate of seven per cent per annum from the date hereof until Paid.

Judgment entered December 12th, 1891.

L. S. B. SAWYER, Clerk.

A true copy. Attest:

[SEAL.] L. S. B. SAWYER, Clerk.

Endorsed: Filed December 12, 1891.

L. S. B. SAWYER, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

THE BANK OF BRITISH NORTH AMERICA,	} No. 10,710.
<i>Plaintiff.</i>	
vs.	
HORATIO T. BARLING AND JAMES EVA,	} No. 10,710.
<i>Defendants.</i>	

I, L. S. B. Sawyer, Clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above entitled action.

Attest my hand and the seal of said Circuit Court, this 12th day of December, 1891.

L. S. B. SAWYER, Clerk.

By W. B. BEAIZLEY, Deputy Clerk.

Endorsed: JUDGMENT ROLL.

Filed December 12, 1891.

L. S. B. SAWYER, Clerk.

By W. B. BEAIZLEY, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE BANK OF BRITISH NORTH AMERICA,	} Plaintiff,
vs.	
HORATIO T. BARLING, ET AL,	} Defendants.

Bill of Exceptions.

This cause came regularly on for trial the 15th day of September, 1891; Smith & Pomeroy appearing as attorneys for the plaintiff, and Daniel Titus appearing as attorney for the defendants.

And thereupon it was admitted by the Attorneys appearing for the respective parties to this action that all the allegations of the plaintiff's complaint were true except the allegations contained in paragraphs 8, 16, and 24 thereof, wherein it is alleged that by reason of the premises the respective defendants became and were liable to pay to the plaintiff the respective proportionate amounts stated therein; and the allegations in paragraphs 5, 13, and 21 of said complaint, wherein it is alleged that the said firm of William T. Coleman and Company sold, transferred and delivered the said bills of exchange set out in said complaint to the plaintiff in the City of Vancouver, British Columbia. And it was further admitted and stipulated that said bills of exchange were and each of them was negotiated to the plaintiff in the State of Oregon, United States of America; and it was further stipulated and admitted that neither of the said defendants had at any time paid any part of the respective proportionate amounts alleged in paragraphs 8, 16 and 24 of said complaint.

It was further admitted and stipulated by the parties hereto that the firm of William T. Coleman and Company at all the times mentioned in plaintiff's complaint was composed of William T. Coleman and Frank Johnson, who at all said times were citizens and residents of the State of California, and that the said Alaska Improvement Company is a corporation organized and existing under the laws of the State of California.

And upon the admissions and stipulations above set forth, and without any further evidence on the part of either plaintiffs or defendants said cause was submitted to the Court for its decision, and thereupon the attorneys for the respective parties filed their Briefs, and afterwards and, on, to wit: the 7th day of December, 1891, said Court ordered judgment for the plaintiff according to the prayer of its complaint.

Assignment of Errors.

When the complaint was filed in said Court, the defendants entered their appearance in said action, and the said defendants filed their Plea in Abatement of said action on the ground that said plaintiff being a banking corporation and engaged in the business of banking in said City and County of San Francisco, had not complied with the statutes of the State of California, to wit: an Act of the Legislature of the said State of California, entitled "An Act Concerning Corporations and Persons Engaged in the Business of Banking," approved April 1, 1876, in this that said plaintiff had not at any time made, published and filed the semi-annual statement required by said Act, and for that reason could not maintain this action.

To this plea the said plaintiff filed its demurrer on the ground that it did not show or state facts sufficient to constitute a defense to said action, or show that the same should abate.

After argument, the Court sustained the said demurrer to said plea, thereby holding and deciding that said plea was bad and insufficient, and that said statute had no application to the plaintiff, corporation.

Second—After the plaintiff's demurrer to the defendants' plea in abatement had been sustained, the defendants demurred to the plaintiff's complaint, and for grounds of demurrer specified that the complaint did not state facts sufficient to constitute a cause of action; that the Court had not jurisdiction of the person of defendants or the subject of the action, and on the further ground that the action was brought on three choses in action, to wit: three bills of exchange which were drawn by a domestic corporation to wit: the Alaska Improvement Company in favor of itself on William T. Coleman and Company, a commercial partnership which was made up of citizens and residents of the State of California, the drawer, drawee and payee of each of said bills of exchange being citizens and residents of the State of California.

The Court overruled the demurrer to the complaint, holding said demurrer bad, which is further assigned here as error.

Third—After the overruling of said demurrer the defendants filed their answer to said complaint, and the action was tried on the 15th day of September, 1891, and on the trial of said action it was admitted that the plaintiff was a foreign corporation engaged in the City and County of San Francisco, State of California, in the business of banking, and had been so engaged at the time it acquired the bills of exchange set out in the complaint.

That the defendants and each of them were citizens and residents of the State of California. That the mercantile firm of William T. Coleman and Company was made up of individuals, each of whom was

a citizen and resident of the State of California, and that the bills of exchange set out in the complaint had been transferred and assigned to the said plaintiff by the said firm of William T. Coleman and Company in the State of Oregon, United States of America.

Afterwards, on to-wit: the 7th day of December, 1891, the Court made its decision in the matter of said action, finding and deciding that the defendants were liable to the plaintiff as charged in the complaint, and ordered and directed judgment be made and entered against them for the several amounts set out in said complaint, to wit: against the defendant Horatio T. Barling in the sum of \$3,003 with interest on the sum of \$1,703 thereof, from the 4th day of June, 1888, and interest on the sum of \$1,300 from the 5th day of July, 1888; also for a judgment against the defendant James Eva in the sum of \$2,310, with interest on the sum of \$1,310 from the 5th day of July, 1888.

And the said defendants hereby specify that the above and foregoing decisions and rulings of the said Court were error.

DANIEL TITUS,
Attorney for Defendants.

It is hereby stipulated and agreed that the above and foregoing Bill of Exceptions is correct, and that the same may be settled and allowed without notice.

SMITH & POMEROY,
Attorneys for Plaintiff.

DANIEL TITUS,
Attorney for Defendants.

Settled and allowed this 18th day of January, 1892.

(Signed) HAWLEY, *Judge.*

Endorsed: Service of the within Bill of Exceptions admitted per copy this 15th day of January, 1892.

SMITH & POMEROY,
Attorneys for Plaintiff.

Filed January 18, 1892.

L. S. B. SAWYER, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit,
Northern District of California.

THE BANK OF BRITISH NORTH AMERICA,	}	No. 10,710.
vs.		
HORATIO T. BARLING ET AL.	}	

December 22, 1890. On Demurrer to Plea in Abatement.

MESSRS SMITH & POMEROY, *for Plaintiff.*

DANIEL TITUS, *for Defendant Eva.*

Hawley, J. Plaintiff is a foreign banking corporation and brings this action against the defendants as stockholders in the Alaska Improvement Company, a corporation to recover their statutory liability for certain debts of said corporation. The suit is founded upon bills of exchange bought by the plaintiff in British Columbia. The defendant James Eva, who is the only defendant served, filed a Plea of Abatement and to this plea the plaintiff files a demurrer on the ground that said plea does not state facts sufficient "to constitute a defense to said action."

The plea and demurrer thereto present the legal question whether it is necessary for a foreign banking corporation doing business in this State, to make, file and publish the statements required by the provision of the "Act Concerning Corporations and Persons Engaged in the Business of Banking" (Stat. of Cal. 1876, 729), as a pre-requisite to its right to maintain an action in the Circuit Court of the United States.

The Statute requires every corporation at certain times every year to publish and file for record a sworn statement of the amount of capital actually paid into such corporation, and of the actual condition and value of its assets and liabilities, and where said assets are situated. It is provided in said Act that "no corporation and no person or persons who fail to comply with . . . any of the provisions of this law, shall maintain or prosecute any action or proceeding in any of the Courts of this State until they shall have first duly filed the statements herein provided for, and in all other respects complied with the provisions of this law."

This Act is general in its terms and applies to all corporations whether foreign or domestic (*Bank of B. N. A., vs. Cahn*, 79 Cal. 464). It will be noticed that it does not prohibit the conducting or carrying on of the banking business unless the statements are made, filed and published as herein prescribed. The penalty imposed for a non-

compliance of its provisions refers only to the right of maintaining or prosecuting any suit in the Courts of the State. In this respect it is clearly distinguishable from the cases of *Ex Parte Schollenberger*, 96 U. S., 369; *Cooper M. Co., vs. Ferguson*, 113 U. S. 733, which are relied upon to support the Plea of Abatement.

If a State Legislature passes an Act imposing terms, as a condition precedent, upon which a foreign corporation shall have the privilege of transacting business within the State, such terms, if held legal and binding by the State Courts would be upheld and enforced by the National Courts, and this is the extent of the principles announced in the cases referred to. But State Legislature cannot restrict, impair or limit the jurisdiction of the National Courts, and the Act in question does not attempt to do so. The penalty imposed by the Act was not, in my opinion, intended to apply and does not apply to a case like the present where the business of the bank in purchasing the bill of exchange, which constitutes the foundation for the institution of the suit against the defendants, was transacted outside of the State of California; but independent of these special facts, it is proper to state that the authorities go still further and support the proposition that State Legislation of this character should be construed as having application only to the maintaining of suits in the State Courts.

In *Union Trust Co. vs. Rochester & P. R. Co.*, Acheson, J., in deciding a similar question, said: "The New York statutory provisions forbidding suit to be brought upon a judgment rendered in a court of record of that State without a previous order of the court in which the original action was brought, granting leave to bring the new suit, must be held as intended only to regulate the course of procedure in the New York State courts. Such was the conclusion of Judges Dillon and Love in respect to a similar statute of the State of Iowa (*Phelps vs. O'Brien, Co.*, 2 Dil. 518). It is an established principle that State legislation cannot in anywise impair or limit the jurisdiction of the Courts of the United States": (29 Fed. R. 610).

The demurrer to the plea of abatement is sustained.

(Signed) HAWLEY, *Judge*.

Endorsed: Opinion on Demurrer to Plea in Abatement of Eva.

Read in open Court Dec. 22d, 1890.

L. S. B. SAWYER, Clerk.

In the Circuit Court of the Ninth Circuit, Northern District of California.

BANK OF BRITISH NORTH AMERICA,	}
<i>Plaintiff,</i>	
vs.	
HORATIO T. BARLING ET AL.,	}
<i>Defendants.</i>	

Petition for Writ of Error to the United States Circuit Court of Appeals.

The petition of Horatio T. Barling and James Eva, defendants in the above entitled action, respectfully shows that they are the defendants in the above entitled action, and that a judgment was ordered and directed to be entered by the said Circuit Court on the 7th day of December, 1891, against them and in favor of the plaintiff as follows, to wit: Against the defendant Horatio T. Barling in the sum of \$3,003 with interest from the 4th day of June, 1888, and against the defendant James Eva in the sum of \$2,310 with interest from said last mentioned date, being the proportion of the said defendants' liability on three bills of exchange set out in the complaint in this action, and made by the Alaska Improvement Company, said defendants being stockholders therein. Said bills of exchange were in the following sums or amounts, to wit: \$2,740, \$2,500 and \$4,000, and were drawn by the said Alaska Improvement Company on William T. Coleman and Company, and payable to drawer, and were negotiated by William T. Coleman and Company to the plaintiff in the State of Oregon. Said bills of exchange were each drawn payable ninety days after date in the City and County of San Francisco, State of California. The drawer of said bills of exchange is a corporation organized under the laws of the State of California, and doing business in the said City and County of San Francisco, where the said bills of exchange were drawn.

William T. Coleman and Company is a mercantile firm, all the members of which are citizens of the State of California, and residing and doing business in said City and County of San Francisco.

The plaintiff, Bank of British North America, is a foreign banking corporation, organized under the laws of the United Kingdom of Great Britain and Ireland, and doing business in the City of London, England, with a branch office in the said City and County of San Francisco, as a banking corporation, and doing a banking business in said city and county during all the times mentioned in the complaint, and ever since said bills of exchange were drawn.

The capital stock of the Alaska Improvement Company, as shown by the complaint, is 20,000 shares of issued stock, of which the de-

defendants are holders as follows, to wit: the defendant Horatio T. Barling 6,500 shares, and the defendant James Eva 5,000, and the amount for which judgment has been entered is the proportion of their liability for said bills of exchange under the statutes of the State of California.

Assignment of Error.

When the complaint was filed in said Court the defendants entered their appearance in said action, and the said defendants filed their plea in abatement of said action on the ground that said plaintiff being a banking corporation, and engaged in the business of banking in said City and County of San Francisco, had not complied with the statutes of the State of California, to wit: an Act of the Legislature of the said State of California, entitled "An Act Concerning Corporations and Persons Engaged in the Business of Banking"; approved April 1st, 1876, in this, that said plaintiff had not at any time made, published and filed the semi-annual statements required by said Act, and for that reason could not maintain this action.

To this plea the said plaintiff filed its demurrer on the ground that it did not show or state facts sufficient to constitute a defense to said action, or show that the same should abate.

After argument the said Court sustained the said demurrer to said plea, thereby holding and deciding that said plea was bad and insufficient, and that said statute had no application to the plaintiff, corporation.

Second—After the plaintiff's demurrer to the defendants' plea in abatement had been sustained, the defendants demurred to the plaintiff's complaint, and for grounds of demurrer specified that the complaint did not state facts sufficient to constitute a cause of action; that the Court had not jurisdiction of the person of the defendants or the subject of the action, and on the further ground that the action was brought on three choses in action, to wit: three bills of exchange which were drawn by a domestic corporation, to wit: the Alaska Improvement Company, in favor of itself on William T. Coleman and Company, a commercial corporation, which was made up of citizens and residents of the State of California, the drawer, drawee and payee of each of said bills of exchange being citizens and residents of the State of California.

The Court overruled the demurrer to the complaint, holding said demurrer bad, which is further assigned here as error.

Third—After the overruling of said demurrer, the defendants filed their answer to said complaint, and the action was tried on the 15th day of September, 1891, and on the trial of said action it was admit-

ted that the plaintiff was a foreign corporation engaged in the City and County of San Francisco, State of California, in the business of banking, and had been so engaged at the time it acquired the bills of exchange set out in the complaint.

That the defendants, and each of them were citizens and residents of the State of California. That the mercantile firm of William T. Coleman and Company was made up of individuals, each of whom was a citizen and resident of the State of California, and that the bills of exchange set out in the complaint had been transferred and assigned to the said plaintiff by the said firm of William T. Coleman and Company in the State of Oregon, United States of America.

Afterwards and, on, to wit: the 7th day of December, 1891, the Court made its decision in the matter of said action, finding and deciding that the defendants were liable to the plaintiff as charged in the complaint, and ordered and directed judgment be made and entered against them for the several amounts set out in said complaint, to wit: against the defendant Horatio T. Barling in the sum of \$3,003 with interest on the sum of \$1,703 thereof from the 4th of June, 1888, and interest on the sum of \$1,300 from the 5th of July, 1888; also for a judgment against the defendant James Eva in the sum of \$2,310 with interest on the sum of \$1,310 from the 4th of June, 1888, and interest on the sum of \$1,000 from the 5th of July, 1888.

And the said defendants hereby specify that the above and foregoing decisions and rulings of the said Court were error, and hereby pray that a writ of error may issue under the statutes in such cases made and provided to the end that said defendants may have the above and foregoing decisions and alleged errors of said Court reviewed by the United States Circuit Court of Appeals, in and for the State of California.

DANIEL TITUS,
Attorney for Defendants.

Endorsed: Filed January 18, 1892.
L. S. B. SAWYER, Clerk.

KNOW ALL MEN BY THESE PRESENTS, That we, James Eva and Horatio T. Barling as principals, and L. Foard and James Madison as sureties, are held and firmly bound unto the Bank of British North America, a corporation, in the full and just sum of six thousand five hundred dollars, to be paid to the said Bank of British North America, a corporation, its certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these

presents. Sealed with our seals and dated this twentieth day of January, in the year of our Lord one thousand eight hundred and ninety-two.

WHEREAS, lately at a Circuit Court of the United States, for the Northern District of California, in a suit depending in said Court between the Bank of British North America, a corporation, plaintiff, and James Eva and Horatio T. Barling defendants, a judgment was rendered against the said defendants; and the said James Eva and Horatio T. Barling defendants having obtained from said Court a Writ of Error to reverse the judgment in the aforesaid suit, and a citation directed to the said Bank of British North America, a corporation, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said James Eva and Horatio T. Barling defendants aforesaid shall prosecute said Writ of Error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

H. T. BARLING	[SEAL].
JAMES EVA	[SEAL].
L. FOARD	[SEAL].
JAMES MADISON.	[SEAL].

Acknowledged before me this day and year first above written.

L. S. B. SAWYER.

*Commissioner U. S. Circuit Court,
Northern District of California.*

UNITED STATES OF AMERICA, {
NORTHERN DISTRICT OF CALIFORNIA. { ss.

L. Foard and James Madison being duly sworn, each for himself, deposes and says, that he is a householder in said District, and is worth the sum of six thousand five hundred dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

L. FOARD.
JAMES MADISON.

Subscribed and sworn to before me this 20th day of January, A. D. 1892.

L. S. B. SAWYER,

*Commissioner U. S. Circuit Court,
Northern District of California.*

Endorsed: Form of Bond on a sufficiency of sureties.

Approved. (Signed) HAWLEY, *Judge.*

Filed January 21, 1892,

L. S. B. SAWYER,

*Commissioner U. S. Circuit Court,
Northern District of California.*

In the Circuit Court of the United States, Ninth Judicial Circuit,
Northern District of California.

THE BANK OF BRITISH NORTH AMERICA,	}	No. 10,710.
vs.		
HORATIO T. BARLING AND JAMES EVA.		

I, L. S. B. Sawyer, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing fifty-six written and printed pages, numbered from 1 to 56 inclusive, to be a full, true and correct copy of the record and of the proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed Writ of Error.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Circuit Court this 30th day of January, A. D. 1892.

[SEAL.]

L. S. B. SAWYER,
*Clerk U. S. Circuit Court,
Northern District of California.*

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES.

*To the Honorable, the Judge of the Circuit Court of the United States
for the Northern District of California,* GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Horatio T. Barling and James Eva, Plaintiffs in Error, and Bank of British North America, Defendant in Error, a manifest error hath happened to the great damage of the said Horatio T. Barling and James Eva, plaintiffs in error. as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals in the Ninth Circuit, together with this writ, so that you have the same at the City and County of San Francisco, State of California, on the 17th day of February next, in the said Circuit Court of Appeals, to be then and there held, that the

record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, the 18th day of January, in the year of our Lord One thousand eight hundred and ninety-two.

[SEAL.]

J. D. MONCKTON,
*Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.*

Allowed by THOMAS P. HAWLEY, *U. S. Judge.*

The answer of the Judges of the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Northern District of California.

The record and all proceedings of the plaintiff whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commended.

BY THE COURT.

[SEAL] L. S. B. SAWYER, Clerk.

Service of the within Writ of Error admitted per copy this day of January, 1892.

SMITH & POMEROY, Per J. N. P.,
Attorneys for Defendants in error.

Filed January 22, 1892.

L. S. B. SAWYER,
*Clerk U. S. Circuit Court,
Northern District of California.*

UNITED STATES OF AMERICA, ss :

THE PRESIDENT OF THE UNITED STATES,

To Bank of British North America, GREETING :

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 17th day

of February next, pursuant to a Writ of Error filed in the Clerk's Office of the Circuit Court of the United States, for the Northern District of California, wherein Horatio T. Barling and James Eva are plaintiffs in error, and you are defendant in error, to show cause if any there be, why the judgment rendered against the said plaintiff in error as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable THOMAS P. HAWLEY, assigned to hold and holding the United States Circuit Court for the Northern District of California, this 21st day of January, A. D. 1892.

THOMAS P. HAWLEY.

Service of the within citation admitted per copy this day of
January, 1892.

SMITH & POMEROY, per J. N. P.

Attorneys for Defendant in Error.

Filed January 22, 1892.

L. S. B. SAWYER,

Clerk United States Circuit Court,

Northern District of California.